

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY APRIL 19, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1445

Introduced by Assembly Member Umberg

February 22, 2005

An act to add Article 2.5 (commencing with Section 150) to Chapter 2 of Part 1 of Division 2 of the Military and Veterans Code, relating to the Military Department.

LEGISLATIVE COUNSEL'S DIGEST

AB 1445, as amended, Umberg. Military Department: Office of Inspector General.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corp, and the Naval Militia. Existing law establishes various duties for these officers and entities.

This bill would establish the Office of the Inspector General for the Military Department. This bill would require the Governor to appoint the inspector general, subject to Senate confirmation, and specify that the inspector general is independent of the chain of command of the Military Department and serves at the discretion of the Governor. This bill would require the inspector general to investigate complaints and allegations of wrongdoing by military personnel, as specified, and would require the inspector general to establish a toll-free public telephone number to receive these complaints and allegations. ~~This bill would also require that disciplinary action be brought against a state officer or employee who intentionally retaliates against a person~~

~~who made a complaint or allegation of wrongdoing to the inspector general, as provided, and would specify that these officers and employees may be liable for civil damages for these same actions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to ensure that Military Department personnel who are
3 employed on state active duty, and thus are not under federal
4 military oversight, as well as those subject to the control of these
5 personnel, receive due process in the consideration of complaints
6 and appeals of disciplinary actions. Therefore, this act establishes
7 oversight procedures in regard to certain personnel actions
8 including discrimination complaints, complaints of retaliation for
9 whistleblowing, and allegations of misconduct on the part of
10 senior managers and leaders.

11 SEC. 2. Article 2.5 (commencing with Section 150) is added
12 to Chapter 2 of Part 1 of Division 2 of the Military and Veterans
13 Code, to read:

14
15 Article 2.5. Office of the Inspector General for the Military
16 Department
17

18 150. For purposes of this article, the following terms have the
19 following meanings:

20 (a) "Department" means the Military Department.

21 (b) "Office" means the Office of the Inspector General for the
22 Military Department.

23 (c) "Inspector general" means the Inspector General for the
24 Military Department.

25 150.10. (a) There is hereby created the Office of the
26 Inspector General for the Military Department.

27 (b) The department shall, from the amount annually
28 appropriated to it, fund the position of inspector general and
29 provide the office space and support personnel requested by the
30 inspector general.

31 (c) The inspector general shall have access to all employees
32 and documents of the department.

1 150.11. (a) The inspector general shall meet the same
2 qualifications established in this code for the Adjutant General.

3 (b) The inspector general is independent of the chain of
4 command of the Military Department.

5 (c) (1) The Governor shall appoint the inspector general,
6 subject to confirmation by the Senate.

7 (2) Upon confirmation by the Senate, the inspector general
8 shall serve at the discretion of the Governor.

9 (3) The inspector general shall serve on state active duty at the
10 grade of O-6.

11 150.12. (a) The inspector general may receive
12 communications from any person, including, but not limited to,
13 any member of the California National Guard, the State Military
14 Reserve, and the Naval Militia.

15 (b) The inspector general shall establish a toll-free public
16 telephone number to receive the complaints and allegations
17 described in subdivision (a) of Section 150.13. The inspector
18 general shall post this telephone number in clear view at every
19 California National Guard armory, flight facility, airfield, or
20 installation.

21 150.13. (a) At the discretion of the inspector general or, upon
22 a written request by the Governor, a member of the California
23 Legislature, the Adjutant General, or any member of the public,
24 the inspector general shall investigate any of the following:

25 (1) Complaints that the Adjutant General or the Assistant
26 Adjutant General has engaged in discrimination or retaliation for
27 whistleblowing.

28 (2) Allegations of misconduct by the Adjutant General or the
29 Assistant Adjutant General.

30 (3) Allegations of misconduct by a person on state active duty
31 in the following grade and position:

32 (A) Officers in grades O-6 and higher.

33 (B) The Commander, the Command Sergeant Major, the
34 Department Command Sergeant Major/Command Chief Master
35 Sergeant and Command Sergeants Major/Command Chief
36 Master Sergeants for the Army, Air, and Joint Divisions of the
37 State Military Reserve, and the equivalent positions in the Naval
38 Militia.

(4) Any other matter involving misconduct by state military personnel that have oversight over state administrative functions or state funding.

(b) If the inspector general conducts an investigation at the request of a member of the California Legislature, the inspector general shall submit to that member a report of his or her findings of that investigation.

(c) (1) A request described in subdivision (a) is not a public record and is not subject to disclosure under the California Public Records Act set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(2) Notwithstanding paragraph (1), the inspector general may, at his or her discretion, disclose to the Governor, a member of the California Legislature, or to a law enforcement agency the identity of a person making a written request or an allegation or complaint described in subdivision (a). The inspector general shall not disclose to any other person or entity the identity of a person making a written request or an allegation or complaint described in subdivision (a), unless the person making the request, allegation, or complaint has consented to the disclosure in writing.

(d) When deemed appropriate by the inspector general, the inspector general shall refer to the federal Inspector General of the Department of Defense any complaints and allegations pertaining to violations of federal military laws or regulations.

~~150.14. (a) Any state officer or employee who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of any state department, board, or authority for having disclosed what the employee, in good faith, believed to be a complaint or allegation described in subdivision (a) of Section 150.13 shall be disciplined by adverse action as provided in subdivision (a) of Section 19574 of the Government Code. If no adverse action is instituted by the appointing power, the State Personnel Board shall take adverse action against the officer or employee in the same manner as provided in Section 19583.5 of the Government Code.~~

~~(b) In addition to all other causes of action, penalties, or other remedies provided by law, any state officer or employee who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee for having~~

1 ~~disclosed what the employee, in good faith, believed to be a~~
2 ~~complaint or allegation described in subdivision (a) of Section~~
3 ~~150.13 shall be liable in an action for damages brought against~~
4 ~~him or her by the injured party. Punitive damages may be~~
5 ~~awarded by the court if the acts of the offending party are proven~~
6 ~~to be malicious. If liability has been established, the injured party~~
7 ~~also shall be entitled to reasonable attorney's fees as provided by~~
8 ~~law.~~

9 ~~(c) For purposes of this section "state officer" includes, but is~~
10 ~~not limited to, a member of the Military Department on state~~
11 ~~active duty and any officer who holds a state commission or~~
12 ~~appointment by the Governor.~~